



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 1, 1996

Mr. James R. Raup
McGinnis, Lochridge & Kilgore, L.L.P.
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

OR96-1371

Dear Mr. Raup:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100827.

The Austin Independent School District ("AISD"), which you represent, received a request for documents that confirm whether AISD requested criminal history record information ("CHRI") checks from the Department of Public Safety ("DPS") on several named individuals. You have submitted to the office two documents that you have identified as responsive to the request. You ask whether these documents are excepted from disclosure under section 552.101 of the Government Code as information made confidential by common-law privacy or chapter 411 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. In *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989), the U.S. Supreme Court concluded that where an individual's CHRI is compiled or summarized by a governmental entity, the information takes on a character that implicates individual's right of privacy in a manner that the same individual records in an uncompiled state do not.

Section 411.083 of the Government Code deems confidential CHRI that DPS maintains, except that DPS may disseminate such records as provided in chapter 411 of the Government Code. The entities specified in chapter 411 are entitled to obtain criminal history information from DPS or another criminal justice agency; however, those entities may not release the information except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Information made confidential by chapter 411 is excepted from disclosure under section 552.101 of the Government Code.

One document that you submitted to this office was generated by DPS and contains a list of individuals on whom DPS performed CHRI inquiries at AISD's request. This document does not constitute CHRI. *See* Gov't Code § 411.082(2) (definition of criminal history record information). Therefore, this document is not confidential under chapter 411 of the Government Code. Nor do we believe that this document is protected by common-law privacy. The mere fact that AISD asked DPS to conduct a CHRI inquiry on an individual is not highly intimate and embarrassing, rather it is routine. However, this document contains social security numbers that may be excepted from disclosure.

Sections 552.024(a) and 552.117(1) provide that current or former officials or employees of a governmental body may elect to keep their social security numbers confidential. You must therefore withhold this information if, at the time AISD received the request for information, the individuals listed on the requested document had elected to keep this information private.¹

The other document that you submitted to this office was generated by DPS and confirms that DPS has CHRI on the individuals named in the document. This document falls within the scope of the chapter 411 definition of CHRI. AISD obtained this document pursuant to section 411.097 of the Government Code, and section 411.097(c) prohibits AISD from releasing this document to the requestor.² Therefore, this document is excepted from disclosure under section 552.101 of the Government Code.

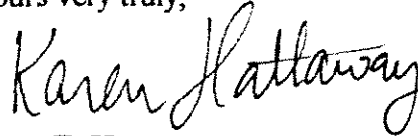
¹Amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), incorporated into the Open Records Act by section 552.101, make confidential social security numbers obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990. Open Records Decision No. 622 (1994) at 2-3. Thus, if these social security numbers were obtained or maintained pursuant to any such provision of law, the numbers are confidential and may not be publicly disclosed.

²Section 411.097(c) of the Government Code provides as follows:

Criminal history record information obtained by a school district, charter school, private school, service center, or shared services arrangement under Subsection (a) or (b) may not be released or disclosed to any person, other than the individual who is the subject of the information, the Texas Education Agency, the State Board for Educator Certification, or the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Karen Hattaway". The signature is written in a cursive, flowing style.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 100827

Enclosures: Submitted documents

cc: Mr. Brian Collister
Reporter
KTBC
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(w/o enclosures)